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NO. 85-2051

Supreme Court, U.S.
FILED
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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM 1986

HERBERT O. JENSEN,

PETITIONER,

V.

WINSTON SATRAN, WARDEN,
NORTH DAKOTA STATE PENITENTIARY,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

HERBERT O. JENSEN
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

I

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I.) Was petitioner compelled to be a witness against himself?

II.) Is the urinalysis screening program a special law?

III.) Was petitioner denied a Miranda warning?

IV.) Was petitioner denied a transcript?

V.) Were the members of the prison adjustment board prejudiced?

VI.) Did the Warden become an unauthorized member of the prison adjustment board?

VII.) Is the prison adjustment board penalty of restitution unconstitutional?

VIII.) Was petitioner denied Discovery?

IX.) Was petitioner given an excessive punishment?

X.) Is the urinalysis program and penalty an expost facto law, or a bill of attainder ?

XI.) Is the urinalysis program an in voluntary, non-therapeutic medical experiment ?

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Comes now the petitioner, Herbert O. Jensen, who respectfully requests that this Honorable Court issue a Writ of Certiorari to review the order of the United States Court of Appeals for the 8th Circuit, dated May 5, 1986.

The petitioner respectfully requests that this Honorable Court give its most liberal consideration and interpretation to this inartful petition, by overlooking any defects in form or content, because it is a pro se petition done without the benefit of legal counsel.

OPINION BELOW

A copy of the order of the United States Court of Appeals for the 8th Circuit, dated May 5, 1986, is attached hereto as Appendix A.

JURISDICTION

This Court's jurisdiction is invoked under Title 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

The petitioner respectfully suggests that all the Amendments of the United States

Constitution, and all the Articles of the North Dakota Constitution, and all the Statutes of the North Dakota Century Code, and all the Codes of the North Dakota State Penitentiary Inmate Handbook, and all the Federal Standards for Prisons and Jails, which are listed in the Appendix, letters B thru W, are relevant to this petition.

STATEMENT OF THE CASE.

On November 10, 1980, the North Dakota State Penitentiary implemented a urine screening program to detect the use of marijuana and other controlled substances. Inmates who were to be tested for drug usage were notified the day before the test was to be given. On the following morning, the selected inmates were required to report to the prison infirmary where the urine sample was taken, and the sample was then delivered to the North Dakota

State Laboratory for the actual testing of the urine sample.

If the E.M.I.T. laboratory test showed a positive result, which indicated drug usage, or the inmate had refused to submit a urine sample, the inmate was considered to have committed a serious offense under the North Dakota "good time" statute, Chapter 12-54.1 of the North Dakota Century Code.

The inmate then received an incident report, appeared before the prison adjustment board, and, if found guilty, could lose 4 month's good time for a first offense, and 4 month's good time and a period of time in disciplinary segregation for a second offense.

On October 30, 1984, petitioner received a urine screening test slip at 6:58 A.M., which he refused to accept.

On October 30, 1984, at 7:04 A.M., the petitioner went to the prison infirmary

for his daily insulin shot, at which time Officer Michael Conmy asked petitioner if petitioner was going to provide a urine sample. Petitioner refused.

On October 30, 1984, at 8:40 P.M., petitioner received and incident report for violating Code I-27 of the inmate handbook, "Refusing to provide urine sample or to take part in other drug testing." (see appendix S)

On November 2, 1984, petitioner appeared before the prison adjustment board, which was composed of one prison staff member, and two security officers.

The petitioner requested that a court reporter be present to record the hearing for the purpose of a transcript for appeal. The petitioner was denied his request by a verbal order of the Warden, which was obtained by the Chairman of the adjust-

ment board during the course of the hearing.

As a result of the prison adjustment board hearing, the petitioner lost 4 month's good time (40 days) for a serious rule infraction.

On November 2, 1984, the petitioner appealed the decision of the prison adjustment board to Warden Winston Satran.

On November 16, 1984, Warden Satran denied the appeal.

On November 17, 1984, the petitioner appealed to the Director of Institutions.

On December 7, 1984, the Director of Institutions denied the appeal.

On December 27, 1984, the petitioner filed an Application for Post-Conviction Relief in South Central District Court, in Bismarck, N.D., pursuant to Chapter 29 - 32 of the North Dakota Century Code.

On February 28, 1985, Judge Benny

Graff denied petitioner's Application for Post-Conviction Relief.

On March 7, 1985, the petitioner appealed Judge Benny Graff's decision to the North Dakota Supreme Court.

On September 6, 1985, the North Dakota Supreme Court affirmed the decision of the South Central District Court, Judge Benny Graff, presiding.

On September 15, 1985, the petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court, For the District of North Dakota, Southwestern Division, Judge Bruce Van Sickle, presiding.

On September 20, 1985, the petitioner filed an affidavit of prejudice against the United States District Court Judge Bruce Van Sickle, for not allowing petitioner Discovery in his prior legal cases.

On September 24, 1985, the petitioner

was advised by the Clerk of United States District Court that the petitioner's case was being transferred to the United States District Court, Southeastern Division, the Honorable Paul Benson, presiding.

On December 31, 1985, Judge Paul Benson denied the petitioner's Petition for A Writ of Habeas Corpus.

On January 6, 1986, the petitioner petitioned the United States District Court, Southeastern Division, for a Certificate of Probable Cause.

On January 9, 1986, the Petitioner filed a Notice of Appeal with the United States District Court, Southeastern Division.

On January 31, 1986, the petitioner's Petition for a Certificate of Probable Cause was denied by Judge Paul Benson.

On February 22, 1986, the petitioner sent an appellant's brief to the United

States Court of Appeals for the 8th Circuit.

On February 24, 1986, the petitioner received a letter from David Haland, Deputy in Charge, United States Court of Appeals for the 8th Circuit, stating that the petitioner's Notice of Appeal had been filed one day late.

On February 27, 1986, the petitioner requested permission to file a late Notice of Appeal from the United States District Court, Southeastern Division.

On April 8, 1986, Judge Paul Benson denied the petitioner's request to file a late notice of appeal.

On April 15, 1986, the petitioner filed a Notice of Appeal, with the United States District Court, Southeastern Division, and also sent an Appellant's brief to the United States Court of Appeals for the 8th Circuit, concerning the April 8, 1986 denial of the request to file a late notice

of Appeal, dated April 8, 1986.

On May 5, 1986, the United States Court of Appeals for the 8th Circuit denied the petitioner's Petition for a Certificate of Probable Cause.

Having exhausted all available remedies, the Petitioner now petitions this most Honorable Court for a Writ of Ceriorari.

REASONS FOR GRANTING THE WRIT

I

Was the petitioner compelled to be a Witness against himself?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that the urinalysis screening program at the North Dakota State Penitentiary had denied him his

constitutional rights, pursuant to Article I, Section 12, of the North Dakota Constitution, (see Appendix F) and the 5th Amendment of the United States Constitution, (see Appendix B) by compelling him to be a witness against himself.

In Hampson v. Satran, 319 NW2d 796 (ND 1982), the North Dakota Supreme Court stated that the urine screening program at the North Dakota State Penitentiary did not violate Hampson's right against self- incrimination.

To Support their ruling, the Court relied on Schmerber v. California, 86 S. Ct. 1826 (1966) which upheld the extraction of a blood sample from a driver, against his wishes, to determine his blood-alcohol level, after he had been involved in an automobile accident.

However, in using Schmerber, the North Dakota Supreme Court failed to consider that

there had been probable cause to believe that Sehmerber had been drinking heavily, because of his slurred speech, staggered movements, and glassy eyes.

The petitioner argues that there was no such probable cause in his case to be forced, under threat of punishment, to produce a urine sample for testing to see if he had been using marijuana, and therefore, his rights against self-incrimination had been violated.

II

IS THE URINALYSIS PROGRAM A SPECIAL LAW?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred when it denied his claim that the urinalysis screening program at the North

Dakota State Penitentiary denied him his constitutional rights of protection against special laws being passed for the punishment of crimes, in violation of Article IV, Section 43, Subsection 21, of the North Dakota Constitution, (see Appendix H) and the due process and equal protection clauses of the 14th Amendment of the United States Constitution. (see Appendix D)

The petitioner contends that both the Due Process clause itself, and "prison" rules and regulations regarding the imposition of punitive sanctions, create requisite liberty interests. Dedrick v. Wallman, 617 F. Supp. 178, 179 (D.C. Iowa 1985), Hewitt v. Helms, 103 S. Ct. 864 (1983)

When Warden Winston Satran imposed increased sanctions by memorandum for 1st, 2nd, and 3rd offenses of dirty urine samples without approval of the Director of Institutions,

pursuant to Chapter 12-27-12 of the North Dakota Century Code, the Warden violated the petitioner's "liberty interest" where the petitioner refuses to take urine test because of ingestion of prescibed medical drugs for for petitioner's health problems. (see Appendix T)

Petitioner believes that such application does constitute "irreparable" injury that Federal intervention is necessary where such "bad faith" or "harrassment" by state officials caused by state officials responsible for prosecution by increased sanctions. Kugler v. Helfant, 95 S.Ct. 1524, 1530 (1975)

III

Was the Petitioner denied a Miranda warning?

The petitioner argues that the United

States Court of Appeals for the 8th Circuit erred when it denied the petitioner's claim that the urinalysis screening program at the North Dakota State Penitentiary denied him his constitutional rights, because he had not been given a Miranda warning before the urine sample was ordered, or before the prison adjustment committee hearing, in violation of the due process and equal protection clauses of Article I, Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

IV

WAS THE PETITIONER DENIED A TRANSCRIPT?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred when it denied the petitioner's claim

that the adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights to a court reporter, or mechanical recording device, for the purpose of a transcript of the prison adjustment committee hearing, for purpose of appeal, in violation of Chapter 12.1-32-03.1 of the North Dakota Century Code, (see Appendix P) and the due process and equal protection clauses of Article I, Section 12 of the North Dakota Century Code, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

The petitioner argues that by not being able to have a transcript of the prison adjustment committee hearing, he was unable to accurately present an appeal to the Warden, the Director of Institutions, and the Courts, by relying only on his memory.

V

WERE THE MEMBERS OF THE PRISON ADJUSTMENT COMMITTE PREJUDICED?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred when it denied the petitioner's claim that the adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights, because the prison staff members who sat on the adjustment committee were prejudiced against the petitioner, in violation of the due process and equal protection clauses of Article I, Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

The United States Supreme Court, in the Younger Doctrine, left room for Federal

equitable intervention in a state criminal trial where there is a showing of "bad faith" or "harrassment" by state officials responsible for prosecution. Younger v. Harris, 91 S.Ct. 746,755 (1971), Kugler v. Holfant, 95 S.Ct. 1524, 1531 (1975)

The adjustment committee was composed of prison administrative personnel and two security officers, who had all sat on previous adjustment committee and grievance committee hearings concerning the petitioner, and who had all been under litigation in the courts by the petitioner, and all of them had formed a bias and prejudice against the petitioner, because he had previously exercised his civil rights, and who had all responded negatively to the petitioner at the adjustment committee hearing because of said bias and prejudice, which resulted in the denial of petitioner's constitutional rights at the hearing.

VI

DID THE WARDEN BECOME AN UNAUTHORIZED MEMBER OF THE PRISON ADJUSTMENT COMMITTEE?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred when it denied his claim that the adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights, when James Borchert, the Chairman of the adjustment committee, contacted the Warden, Winston Satran, during the adjustment committee hearing, to make a decision regarding one of the petitioner's requests, thereby making the Warden one of the members of the adjustment committee, which established a conflict of interest for the petitioner's appeal process to the Warden from the final decision of the prison adjustment committee, because the Warden is

the appeal decision maker, thereby violating the petitioner's rights of due process and equal protection, pursuant to Article I, Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

Not only was the Chairman of the prison adjustment committee acting improperly, in his contacting the Warden during the hearing, concerning the petitioner's request for a transcript to be made, but Mr. Borchert's writing in Block 20 of the Incident Report, last sentence, (petitioner admits) that he was required to take the urine test. The petitioner denies making such a statement.

VII

IS THE ADJUSTMENT COMMITTEE PENALTY OF RESTITUTION UNCONSTITUTIONAL?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that the prison adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights, because the penalty of restitution could have been imposed upon him, and might still be imposed upon him in the future, by the prison adjustment committee, which would be in violation of the due process and equal protection clauses of Chapters 12.1-32-02 (1)(e), (see appendix O) and 12.1-32-08 of the North Dakota Century Code. (see Appendix Q) and Article I, Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

The two North Dakota Century Code Chapters listed above, restrict the use of restitution to court proceedings only, and they

require that a restitution hearing must be held to determine reasonable damages that have been sustained by the victim, the ability of the defendant to pay the damages, and that the restitution will serve a valid rehabilitation purpose.

In Jensen v. Lick, 589 F. Supp. 35 (D.C. ND 1984), the United States Court of the Northwestern District of North Dakota ruled that the petitioner had standing to challenge the urine test at the North Dakota State Penitentiary, even though he had suffered no punishment, because he might be required to take the urine test again in the future, and he might be subject to penalties and punishment as a result.

VIII

WAS THE PETITIONER DENIED DISCOVERY?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that he had been denied his constitutional rights of discovery of ALR's, interrogatories, and the production of documents, throughout the entire legal action, in violation of the due process and equal protection clauses of Article I, Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

IX

WAS THE PETITIONER GIVEN AN EXCESSIVE SENTENCE?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that the

prison adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights, when they imposed an excessive sentence of 4 month's loss of good time (40 days), in violation of the due process and equal protection clauses, and the cruel and unusual punishment clauses, of Chapters 19-03.1-23 (3), (see Appendix R) and 12-47-26, (see the Appendix I), and 12.1-32-01 (6) of the North Dakota Century Code, (see Appendix N), and Article I, Section 11, of the North Dakota Constitution, (see Appendix E) and the 8th Amendment of the United States Constitution. (see Appendix C)

Chapter 19-03.1-23 (3) of the North Dakota Century Code states that any person who possesses less than one-half ounce (14.175 grams) of marijuana shall be guilty of a class B Misdemeanor. Chapter 12.1-32-

01 (6) states that the punishment for a class B misdemeanor is a maximum penalty of 30 days imprisonment.

The petitioner was sentenced by the prison adjustment committee to a loss of 4 month's good time, which amounts to 40 days, which is in excess of the class B misdeameanor statute.

Chapter 12-47-27 of the North Dakota Century Code states that no unusual punishment shall be inflicted upon the inmates of the penitentiary for violation of the rules and regulations.

X

IS THE URINALYSIS PROGRAM AND PENALTY AN EX-POST FACTO LAW, OR A BILL OF ATTAINDER ?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that the urinalysis program at the North Dakota State Penitentiary denied mim his constitutional rights, because the penalty imposed upon him was not part of his original sentence,

nor was it in effect at the time of his original sentence, in violation of the due process and equal protection, ex post facto and bill of attainder, and cruel and unusual punishment clauses of Article I, Sections 11 (See appendix E) 12 (See appendix F) and 18 (See appendix G of the North Dakota Constitution, North Dakota State Penitentiary Inmate Handbook, Category I Infractions, (See appendix S), the 8th and 14th Amendments of the United States Constitution, See appendix C and D), and Article I, Section 9, Clause 3 of the United States Constitution. (See Appendix D1).

An ex post facto law is a law which imposes a punishment for an act which was not punishable at the time it was committed.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

XI

IS THE URINALYSIS PROGRAM AN INVOLUNTARY, NON-THERAPEUTIC MEDICAL EXPERIMENT ?

The petitioner argues that the United States Court of Appeals for the 8th Circuit erred, when it denied his claim that the prison adjustment committee at the North Dakota State Penitentiary denied him his constitutional rights, because the petitioner was not given an administrative hearing for involuntary, non-therapeutic medical experiment, in violation of Chapters 12-47-27 (2) of the North Dakota Century Code (See Appendix J) and NDCC 12-47-28 (See Appendix K) and the due process and equal protection clauses of Article I,

Section 12 of the North Dakota Constitution, (see Appendix F) and the 14th Amendment of the United States Constitution. (see Appendix D)

In Varnson v. Satran, 368 NW2d 533 (N.D. 1985), footnote 2, the North Dakota Supreme Court noted that neither the prison adjustment committee, nor the parole board, are governed by the provisions of the Administrative Agencies Practices Act, Chapter 28-32 of the North Dakota Century Code. (see Appendix R1)

The petitioner has been under a doctor's care for heart condition, high blood pressure, and diabetes for many years. The petitioner is on regularly prescribed medication of Diabinese, Inderall, Nitro-Tablets, Nitro-bid, Transderm Nitro 5, Nifedipine, NPH, and R Insulin for all these medical problems.

The petitioner argues that the urine screening program is an involuntary, non-therapeutic medical experiment, (see Appendix U, V, W) and therefore requires an administrative hearing, pursuant to Chapter 12-47-27 of the North Dakota Century Code. (see Appendix J)

Experts testifying in Higgs v. Wilson, 616 F. Supp. 226,231 (D.C. KY. 1985) agreed that legal drugs in high doses could interfere with the test and create positive results when there are no drugs in the urine.

CONCLUSION

Therefore, based on all the foregoing statements and reasons presented in this petition and appendix, the petitioner respectfully requests that this most Honorable Court grant his petition for a Writ of Certiorari.

The opinion of the United States Court of Appeals for the 8th Circuit is in conflict with the intent and spirit of the law of the Constitutional rights of the petitioner.

Respectfully submitted,

Herbert O. Jensen

Herbert O. Jensen
P.O. Box 5521 NDSP
Bismarck, N.D. 58502-5521

Subscribed and sworn to before me on this

2nd day of June 1986.

My commission expires on:

4/17/91

NOTARY PUBLIC

CERTIFICATE OF SERVICE

It is hereby certified that true and correct of the above and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals was mailed: 40 copies to Joseph F. Spaniol, Jr., Clerk of Court, One First Street, N.E., Washington, D.C. 20543; 5 copies to the Honorable Rex E. Lee, Solicitor General United States Department of Justice, Washinton, D. . 20530; 1 copy to the Attorney General, Nickolas J. Spaeth, State Capitol Building, Bismarck, ND 58505, was mailed on this 2nd Day of June 1986, postage prepaid at the North Dakota State Penitentiary, Box 5521 NDSP, Bismarck, ND 58502-5521.

Herbert O. Jensen

HERBERT O. JENSEN
Box 5521 NDSP
Bismarck, ND 58502-5521

Subscribed and sworn hereto before me on this 2nd Day of June 1986.

My commission expires on: 4/10/91

Notary Public

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 86-5166-ND

Herbert O. Jensen,	*	Appeal from the United
Appellant,	*	States District Court
vs.	*	for the District of
Winston Satran, Warden, North Dakota State Penitentiary,	*	North Dakota
Appellee.	*	

The application for a certificate of probable cause, having been considered by the Court, is denied.

May 5, 1986

APPENDIX B

AMENDMENT 5

CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX C

CONSTITUTION OF THE UNITED STATES

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

APPENDIX D

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D1

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 9, CLAUSE 3

No bill of attainder or ex post facto law shall be passed.

APPENDIX E

NORTH DAKOTA CONSTITUTION

ARTICLE I, SECTION 11

All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

APPENDIX F

NORTH DAKOTA CONSTITUTION

ARTICLE I, SECTION 12

In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compell the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

APPENDIX G

NORTH DAKOTA CONSTITUTION

ARTICLE I, SECTION 18

No Bill of Attainder, ex post facto, or law impairing the obligations of contracts shall ever be passed.

APPENDIX H

NORTH DAKOTA CONSTITUTION

ARTICLE IV, SECTION 43, SUBSECTION 21

The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

21.) For the punishment of crimes.

APPENDIX I

NORTH DAKOTA CENTURY CODE

CHAPTER 12-47-26

The warden and all officers of the penitentiary uniformly shall treat the inmates thereof with kindness, and the warden shall require of the officers and guards that, in the execution of their respective duties, they in all cases shall refrain from boisterous and unbecoming language in giving their orders and commands. No corporal or other painful or unusual punishment shall be inflicted upon the inmates of the penitentiary for violation of the rules and regulations thereof.

APPENDIX J

NORTH DAKOTA CENTURY CODE

CHAPTER 12-47-27 (2)

If the person objects to the findings of the evaluation committee or to the transfer to the state hospital or other appropriate treatment facility, the warden shall set a date for an administrative hearing. The hearing shall be conducted by a three-member board appointed by the warden. The board shall include a member of the prison counseling staff, a licensed physician, psychiatrist, or clinical psychologist, and shall be chaired by an employee designated by the warden. In no event may a member of this board have been involved in the development of the evaluation report. Following the hearing, the board shall submit its findings and the basis of those findings to

to the warden in writing. Unless the board determines that the person does not meet the criteria of a person requiring treatment, the warden may order the person transferred to the state hospital or other appropriate treatment facility. The warden shall notify the person of the results of the administrative hearing and the right to an involuntary treatment hearing fourteen days after transfer, pursuant to section 25-03.1-19, before a magistrate of the court where the hospital or treatment facility is located. If the hearing determines that the transferred person should be discharged, the hospital or treatment facility shall return the person to the custody of the warden for transfer to the penitentiary unless his sentence has expired.

APPENDIX K

NORTH DAKOTA CENTURY CODE

CHAPTER 12-47-28

The Warden of the penitentiary shall deliver to the superintendant of the state hospital or the admitting officer of another appropriate facility, with any person transferred thereto as provided in section 12-47-27, a correct copy of the written order of the warden directing such transfer, accompanied by a copy of the person's request for or consent to hospitalization, the evaluation committee's report, and the findings of the administrative hearing, if one has been held. The superintendant of the state hospital or the admitting officer of another appropriate facility shall receive such person into the hospital or facility upon the presentation of such order and shall deliver to the warden a certificate acknowledging the receipt of such person and of the original order. The certificate of the superintendant of the state hospital or the admitting officer of another appropriate facility shall be retained by the warden and filed in his office.

APPENDIX L

NORTH DAKOTA CENTURY CODE

CHAPTER 12-54.1-01(5)

Offenders sentenced to the penitentiary or state foram shall be eligible to earn cood conduct sentence reductions. Whenever two or more sentences have been imposed upon an offender, the aggregate of the several sentences shall be the basis for determining the rate of reduction. Sentences may be reduced at the following rates:

5. Ten days a month on a sentence of ten years or more.

APPENDIX M

NORTH DAKOTA CENTURY CODE

CHAPTER 12-54.1-02

Compliance with institutional rules and cooperation in performing assigned jobs shall be the basis for good conduct sentence reduction in any given month. Jobs should be assigned according to the individual's talents and shall include both physical-menial and mental-creative forms of labor. Rules violation or the refusal to work shall result in forfeiture of good conduct sentence reduction for the month in which the infraction or infractions occur. Serious rules infractions, as defined by rule and regulation, may result in forfeiture of all sentence reductions earned from the date of sentence to and including the month in which such infraction or infractions occur. Forfeiture of good conduct sentence reductions for more than one month must be approved by the director of institutions who may act on recommendations from the warden or initiate his own investigation into the particulars of a violation. Good conduct sentence reductions shall not be withheld for months subsequent to the month in which an infraction or infractions occur.

APPENDIX N

NORTH DAKOTA CENTURY CODE

CHAPTER 12.1-32-01 (6)

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

(6) Class B misdemeanor, for which a maximum penalty of thirty days imprisonment, a fine of five hundred dollars, or both, may be imposed.

APPENDIX O

CHAPTER 12.1-32-02(1)(e)

NORTH DAKOTA CENTURY CODE

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:

e. Restitution for damages resulting from the commission of the offense.

APPENDIX P

NORTH DAKOTA CENTURY CODE

CHAPTER 12.1-32-03.1(1)

1. Except as provided , all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless he may be subject to a sentence of imprisonment under subsection 6 of section 12.1-32-01.

APPENDIX Q

NORTH DAKOTA CENTURY CODE

CHAPTER 12.1-32-08

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:

a. the reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action.

b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.

c. The likelihood that attaching a condition relating to restitution or reparation will serve a rehabilitational purpose in the case of the particular offender considered.

The Court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action

arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court so directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgements rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

APPENDIX R

NORTH DAKOTA CENTURY CODE

CHAPTER 19-03.1-23 (3)

3. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter; provided, that any person whose conduct is in violation of section 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection regarding possession is guilty of a class C felony; except that any person who violates this subsection regarding possession of one-half ounce (14.175) grams to one ounce (28.35 grams) of marijuana, shall be guilty of a class A misdemeanor; and any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce (14.75 grams) of marijuana shall be guilty of a class B misdemeanor.

APPENDIX R1

NORTH DAKOTA CENTURY CODE

CHAPTER 28-32-01 (m)(n)(p)

"Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administartive agency does not include:

m. The director of institutions.

n. The board of pardons.

p. The parole board.

APPENDIX S

NORTH DAKOTA STATE PENITENTIARY
INMATE HANDBOOK

CODE I - 27

Category I Infractions:

I-27 Refusing to provide urine sample or to take part in other drug testing.

APPENDIX T

NORTH DAKOTA STATE PENITENTIARY

MEMORANDUM

TO: INMATE POPULATION

FROM: WINSTON E. SATRAN, WARDEN

DATE: NOVEMBER 14, 1984

SUBJ: DISCIPLINARY ACTION - DRUG OFFENSES

The following direction has been given to the Adjustment Committee and will be implemented immediately:

"Because of the continued drug usage by individuals in the institution, the following disciplinary actions will be implemented immediately:

When an individual is found guilty of a dirty urine, adulterated urine, or a drug offense the first time, the individual is to be given 15 days in Disciplinary Segregation and a minimum of a loss of 6 month's good time.

If it is the individual's second offense, the individual is to be given 15 days in D.S. with a minimum of a year's loss of good time.

If it is a third offense, the individual is to be given 15 days in D.S. with a loss of all accrued good time.

APPENDIX U

FEDERAL STANDARDS FOR PRISONS & JAILS

1.10 Each facility develops and implements policies and procedures to ensure the right of convicted inmates to refuse to participate in activities and programs, without penalty, except for programs mandated as part of the inmate's sentence and work assignments. Persons being held in custody awaiting arraignment or trial are not required to participate in facility programs or to do work assignments other than personal housekeeping.

Discussion: Rehabilitation programs are generally believed to have the greatest potential for success where participation is fully voluntary. Program participation is enhanced where programs are of high quality and are relevant to inmate interests and needs. Compensation for program participation is suggested if participation in education or other rehabilitation programs would conflict with inmates' opportunities to earn money by working in prison industries or other work programs.

APPENDIX V

FEDERAL STANDARDS FOR PRISONS & JAILS

5.50 Written policy prohibits inmates from participating in medical or pharmaceutical testing for experimental or research purposes.

Discussion: Inmates may not be used as subjects for any non-therapeutic medical experimentation including the use of unestablished drugs and unapproved medical techniques. This is not intended to preclude the use of experimental diagnostic and therapeutic measures that may be warranted for the diagnosis or treatment of a specific inmate, as described in standard 5.51.

APPENDIX W

FEDERAL STANDARDS FOR PRISONS & JAILS

5.51 Therapeutic medical treatment specifically designed to benefit an individual inmate is permitted provided that (1) the treatment is approved as medically sound and in conformance with medically accepted standards by a committee of outside medical consultants, and (2) the inmate gives full voluntary and informed written consent after being informed of the treatment's likely effects, the likelihood and degree of improvement and/or remission, the hazards of the treatment, the reasonable alternatives to the treatment, and the inmate's ability to withdraw from the treatment without penalty at any time.